



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO WELLMONT HEALTH SYSTEM – BRISTOL REGIONAL MEDICAL CENTER

SECTION A: Purpose

This is a Consent Order issued by the Virginia Waste Management Board to Wellmont Health System – Bristol Regional Medical Center. This Order is issued pursuant to the authority granted to the Waste Management Board by § 10.1-1455 of the Code of Virginia to resolve certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" or "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a consent order.
6. "Company" means Wellmont Health System, a company certified to do business in Virginia and its affiliates, partners, subsidiaries and parents.
7. "Facility" or "BRMC" means Bristol Regional Medical Center, owned and operated by the Company, and located at 1 Medical Park Boulevard, Bristol, Tennessee.

8. **“RMW” means regulated medical wastes.**
9. **“SWRO” means the Department’s Southwest Regional Office, located in Abingdon, Virginia.**
10. **“Regulations” means Virginia’s Regulated Medical Waste Management Regulations, 9 VAC 20-120-10 *et seq.***

SECTION C: Findings of Facts and Conclusions of Law

1. **On February 13, 2007, DEQ staff were notified by City of Bristol, Virginia (“City”) Integrated Solid Waste Management Facility personnel that its Baler Transfer Station, Solid Waste Management Facility Permit-By-Rule (“PBR”) No. 121, had received RMW that day. The RMW was identified during floor inspections of material received at the facility’s baler transfer station. Per City personnel, the RMW was received from the Company’s Facility, and was delivered to the baler transfer station by Waste Management, Inc. Per documentation provided by City personnel, a total of 8.58 tons of material identified as a “mixed load of municipal solid waste and medical waste” was returned to the generator for proper treatment/disposal. MXI Environmental Services, LLC was contracted by the City to transport the rejected material back to the generator. Documentation provided to DEQ staff indicated that the RMW included at least one red biohazard bag, and blood tubing contained in clear bagging. These items apparently had not been shredded and processed through the BRMC autoclave/microwave.**
2. **On February 20, 2007, DEQ staff were again notified by City personnel that its Baler Transfer Station, Solid Waste Management Facility PBR No. 121, had received RMW that day. The RMW was identified during floor inspections of material received at the facility’s baler transfer station. Per City personnel, the RMW was received from BRMC, and was delivered to the baler transfer station by Waste Management, Inc. Per documentation provided by City personnel, a total of 8.95 tons of material was returned to the generator for proper treatment/disposal. MXI Environmental Services, LLC was contracted by the City to transport the rejected material back to the generator. Documentation provided to DEQ staff indicated that the RMW included blood tubing contained in clear bagging. These items apparently had not been shredded and processed through the BRMC autoclave/microwave.**

3. **9 VAC 20-120-150 of the Regulations list the following as being subject to the chapter: 2) Human blood and human body fluids; ...7) Any solid waste contaminated by or mixed with regulated medical wastes.**
4. **9 VAC 20-120-90.1 of the Regulations states "Packaging. Treated waste that was once regulated, but is no longer regulated medical waste, shall not be packaged as regulated medical waste. Solid waste packaged as regulated medical waste is regulated medical waste".**
5. **9 VAC 10-120-640.2.b Microwave treatment, states "(1) Microwaving treatment shall incorporate pretreatment by shredding and steam injection or induction".**
6. **9 VAC 20-120-650. Disposal of treated wastes states, "A. Regulated medical waste that has been treated by an alternate treatment technique and managed in compliance with this chapter is no longer regulated medical waste and is solid waste. Treated solid waste may be compacted. B. All regulated medical waste that has been treated shall be placed in opaque plastic bags and sealed. The bags may not be red in color. Where bulk treatment is used and the solid waste is compacted and immediately placed in closed bulk solid waste management containers, which are more than 64 gallons in volume, the repackaging of the treated solid waste in bags is not required. C. Regulated medical waste treated in compliance with Part VII, Part VIII or Part IX shall be deemed to be treated in accordance with this chapter. Regulated medical waste not treated in accordance with this chapter shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility."**
7. **DEQ's SWRO issued a Notice of Violation ("NOV") to the Company on February 27, 2007 citing the above listed violations. DEQ staff and Company officials then met on March 12, 2007 to resolve the apparent violations.**

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §10.1-1455 and upon consideration of Va. Code § 10.1-1186.2, the Virginia Waste Management Board orders the Company, and the Company agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders the Company, and the Company voluntarily agrees, to a civil charge of \$18,000.00 in settlement of the violations cited in this Order, to be paid as follows:

1. **The Company shall pay \$4,500 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check or money order payable to the "Treasurer of Virginia", and delivered to:**

**Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218**

The payment shall include Wellmont – Bristol Regional Medical Center’s Federal Identification Number and shall identify that payment is being made pursuant to this Order.

- 2. The Company shall satisfy \$13,500 of the civil charge by satisfactorily completing the Supplemental Environmental Project (“SEP”) described in Appendix B of this Order.**
- 3. The net project cost of the SEP to the Company shall not be less than the amount set forth in Paragraph D.2. If it is, the Company shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. “Net project costs” means the net present after-tax cost of the SEP, including tax savings, grants and first-year operating cost reductions or other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings, grants, or first-year operations cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.**
- 4. By signing this Order the Company certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.**
- 5. The Company acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the Company to a third party, shall not relieve the Company of its responsibility to complete the SEP as described in this Order.**
- 6. In the event it publicizes the SEP or the SEP results, the Company shall state in a prominent manner that the project is part of a settlement for an enforcement action.**
- 7. The Department has the sole discretion to:**
 - a. Authorize any alternate SEP proposed by the Company; and**
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.**

8. Should the Department determine that the Company has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Company in writing. Within 30 days of being notified, the Company shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein, including those matters addressed in the NOV issued on February 27, 2007. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Company admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Company declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the Virginia Waste Management Act, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the Company to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

- 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.**
- 8. The Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director and the Director of the SWRO within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:**
 - a. the reasons for the delay or noncompliance;**
 - b. the projected duration of such delay or noncompliance;**
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and**
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.**

Failure to notify the Director of the Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.


- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.**
- 10. Any plans, reports, schedules or specifications attached hereto or submitted by the Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.**
- 11. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.**
- 12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.**

- 13. The undersigned representative of the Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Company to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of the Company.**
- 14. By its signature below, the Company voluntarily agrees to the issuance of this Order.**

And it is so ORDERED this ____ day of _____, 2007

**Michael D. Overstreet, Regional Director
Department of Environmental Quality**

Wellmont Health System – Bristol Regional Medical Center voluntarily agrees to the issuance of this Order.



**Bart Hove
President
Wellmont Health System -
Bristol Regional Medical Center**

Date: 6/11/07

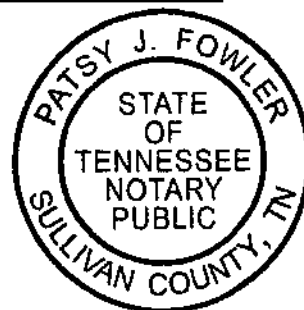
State of Tennessee
~~Commonwealth of Virginia~~

City/County of Bristol

The foregoing document was signed and acknowledged before me this 11th day of June, 2007 by Bart Hove, who is President,
name title
on behalf of Wellmont Health System – Bristol Regional Medical Center.

Date: 6-11-07 Patsy J. Fowler
Notary Public

My commission expires: 10-6-09



APPENDIX A

In order to comply with the provisions of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations, Wellmont Health System – Bristol Regional Medical Center agrees to implement the following actions by the dates noted below:

- 1. The Company shall provide updated training for all affected personnel on the proper packaging, labeling, identification and disposal of regulated medical wastes. Within 30 days of the effective date of the Order, the Company shall submit a letter to DEQ's SWRO certifying that all affected personnel at BRMC have received this updated training.**
- 2. Within 30 days of the effective date of the Order, the Company shall provide DEQ's SWRO with a detailed cost of the cleanup and disposal of the regulated medical wastes removed from the City of Bristol, Virginia Integrated Solid Waste Management Facility's baler transfer station on February 13 and February 20, 2007.**

APPENDIX B

The Company shall perform the SEP identified below in the manner specified in this Appendix.

- 1. The SEP to be performed by the Company is the purchase of a Phillips Heart Start MRX monitor/defibrillator with EKG, SPO2 and CO2 capabilities for the Virginia State Police Med Flight Program, Med Flight II.**
- 2. The SEP shall be completed within 30 days of the effective date of the Order.**
- 3. The Company shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. The Company shall submit the final report and certification to the Department within 45 days of the effective date of the Order.**
- 4. If the SEP has not or cannot be completed as described in the Order, the Company shall notify DEQ in writing no later than 30 days from the effective date of the Order. Such notification shall include:**
 - a.) an alternate SEP proposal, or**
 - b.) payment of the amount specified in Paragraph D.2. as described in Paragraph D.1.**
- 5. The Company shall submit to the Department written verification of the final overall and net cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment or similar documentation within 45 days of the effective date of the Order. For the purpose of this submittal, net costs can be either the actual final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the Company's Chief Financial Officer concerning the projected tax savings, grants or first-year operating cost reductions or other efficiencies.**
- 6. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:**

**Ms. Ruby Scott
Department of Environmental Quality
Southwest Regional Office
P. O. Box 1688
Abingdon, VA 24212**